APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,421	03/29/2001	Jay H. Connelly	42390P10861	9401

8791　7590　05/09/2006		EXAMINER
BLAKELY SOKOLOFF TAYLOR & ZAFMAN		STERRETT, JONATHAN G
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SEVENTH FLOOR	ART UNIT	PAPER NUMBER
LOS ANGELES, CA 90025-1030	3623	

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		09/823,421	CONNELLY, JAY H.
		Examiner	Art Unit	
		Jonathan G. Sterrett	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   This **Final Office Action** is responsive to applicant's amendment filed

February 27, 2006. Applicant's amendment of February 27, 2006 amended

Claim 1, 14 and 23. Currently **Claims 1-27** are pending.

Response to Arguments

2.   Applicant's arguments filed on February 27, 2006 have been fully

considered but they are not persuasive.

3.   The applicant argues that Gerace '396 does not provide feedback data

that includes a predictive rating of the broadcast product and that hits and click-

throughs are not a predictive rating.

The examiner respectfully disagrees. Gerace '396's use of hits and click-

throughs are in fact feedback data that provides a prediction because the

invention of Gerace '396 uses those hits and click-throughs to determine what

the user is likely to hit and click-through in the future. This determination is a

prediction, based on the hits and click-throughs, of what items the user is likely to

want to see in the future. The user viewing history object of Gerace uses this

information and stores it. The information gathered is transparent to the user,

because it is not readily apparent to the user that this information is being

gathered.

4.   The applicant argues that Gerace 735 and Gerace 396 do not teach "a

predictive rating of a broadcast product to predict an interest level of the user in

the broadcast product based on the information about the user's interest in other

broadcast products.

The examiner respectfully disagrees.

Gerace 396 teaches that the feedback of what the user is looking at, the

types of articles and advertisements is used to determine what articles and

advertisements the user is likely to want to see in the future. Articles and

advertisements to appear before the user are screened based on what the user

has seen in the past. The prediction is based on the number of hits and click-

throughs, which are a type of predictive rating, in that they predict what a user

will hit and click-through of items in the future. For example, if a user was a

sports fanatic and had no interest in stock listings, then Gerace's invention would

submit articles and advertisements to that user that were sports-related, rather

than show agate information that discussed an M&A's effect on gasoline prices in

the Midwest. Gerace's invention is predicting that the user will continually be

interested in sports in the future, if all they have looked at in the past were the

Washington Senator's standings in the national league or similar sports-related

information. Gerace's invention uses this prediction to send broadcast

information (i.e. products) to the user based on their viewing history. So the

viewing history (i.e. those hits and click-throughs) contains a predictive rating of

what kind of information they will desire in the future. The prediction is based on

the user's interest in other broadcast products, because the user's viewing

history is used to determine what future products will be shown to the user.

5.   The applicant argues that the information is not stored in a memory device

of the clients, as taught by Gerace, however this is moot in view of new grounds

of rejection below. The examiner notes that the rejection of Claim 1 now uses

Abelow, since Abelow teaches feedback information being stored in a memory

device of the clients. Abelow and Gerace both address using feedback from

customers and thus both are analogous art.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7.   **Claims 1-3, 10-16 and 20-27** are rejected under 35 U.S.C. 103(a) as

being unpatentable over Gerace US 5,848,396 in view of Abelow US 5,999,908.

Regarding Claim 1, Gerace teaches:

receiving a request to obtain consumer feedback on a broadcast

product

column 12 line 59-60, sponsors of advertisements can obtain reports through requesting them, advertisements are a type of broadcast product.

sending at least one product description data to a plurality of clients

column 12 line 7-10, ad package object comprises product description data; column 8 line 13-16, ads are displayed on webpages of a plurality of clients;

receiving a feedback data on the broadcast product from each of the plurality of clients transparent to the user of the clients

column 12 line 57-63, computer subroutine, transparent to user, records successful use of advertisements (ads are a type of broadcast product), including hits and click-throughs;

wherein the feedback data includes a predictive rating of the broadcast product to predict an interest level of the user in the broadcast product based on information about the user's interest in other broadcast products.

Column 12 line 19-21, hits and click-through's provide a predictive rating of the user based on the number of times they hit and clicked through various items. – see figure 3G for the user viewing history that stores the user viewing history

Column 2 line 30-35, the user's viewing habits form a profile that is used to predict what over types of ads and information they are likely to want to see in the future – i.e. a prediction is formed based on the feedback data.

and the information is stored in a memory device;

Column 7 line 19-21, the user viewing history is stored (i.e. recorded by the user viewing history object) – see also column 6 line 5-10.

Column 6 line 45-50, the objects storing the user viewing history are activated when a computer user logs on – see Figure 2 #73 and Figure 3A #27, the examiner interprets the storage of the user viewing history object to be running on the web server where the viewing history information is stored on the server.

processing a consumer feedback summary based on the feedback data on the broadcast product

column 13 line 9-11, Demographic Response Rate Report for advertisements (ads are a type of broadcast product).

Gerace does not teach where the feedback data is stored on a memory device of each of the clients, but rather is stored on the server that is monitoring the user viewing history.

Abelow teaches where feedback data from each of the clients is stored in a memory device of each of the clients (see column 2 line 59-61) and where this data is uploaded periodically.

Abelow teaches that having the memory device in each of the clients enables each device to be stand-alone and only requires periodic connection to the network for uploads and downloads (column 21 line 60-65).

Both Abelow and Gerace address obtaining customer feedback to improve services and products provided to customers, thus both Abelow and Gerace are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Abelow, regarding obtaining customer feedback, to include the step where the feedback was stored in a memory device of each of the clients, because it would the device of the clients to be stand-alone and only require periodic connection to the network.

Regarding **Claim 2**, Gerace teaches:

communicating the consumer feedback summary to a product provider of the broadcast product

column 18 line 51-53, sponsor request for report causes reporting subroutine to communicate the report back to the sponsor (sponsor of the advertisement; ads are a type of broadcast product).

Regarding **Claim 3**, Gerace teaches:

wherein the request to obtain consumer feedback is received from a product provider of the broadcast product.

column 12 line 7-9, sponsors have ad packages which can be for products, services or any other information found in advertisements (as noted above the ads themselves are a type of broadcast product).

Regarding **Claim 10**, Gerace teaches:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more ways of marketing a product.

column 19 line 48-50, sponsor can create a customized report to follow success of advertisement; column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 11**, Gerace teaches:

wherein the consumer feedback summary comprises a marketing success comparison data

column 19 line 66-column 20 line 6, program 31 allows sponsors to compare success rates of different advertisements and advertising aspects.

Regarding **Claim 12**, Gerace teaches:

wherein the product description data comprises meta-data

column 12 line 28-32, profile information in ad series object comprises metadata.

Regarding **Claim 13**, Gerace teaches:

the product description data comprises program guide information

column 22 line 43-52, media and TV schedule information comprises

program guide information.

Claims 14-16 and 20-27 recite similar limitations as those recited in

Claims 1-3 and 10-13 above, and are therefore rejected under the same

rationale.

Regarding **Claim 14**, Gerace teaches all the limitations above in Claim 1,

and also teaches a broadcast center server (i.e. web server – see Figure 2 #27

and column 4 line 45-50 regarding operation of the web server).

8.   **Claims 4-9 and 17-19** are rejected under 35 U.S.C. 103(a) as being

unpatentable over Gerace US 5,991,735 in view of Abelow US 5,999,908.

Regarding **Claim 4**, Gerace teaches obtaining customer feedback

transparent to the user regarding advertisements.

Gerace doesn't teach:

wherein the request to obtain consumer feedback comprises a request to test the success of one or more products.

Abelow does teach:

wherein the request to obtain consumer feedback comprises a request to test the success of one or more products

column 9 line 38-39, module obtains findings during the course of product uses; column 19 line 54-56, automatic findings from field trials for product uses; column 33 line 3; module can obtain data from passive interactions, where the user is unaware that data is being gathered on their use of product; column 38 line 61-67, product performance may be passively gathered without the customer's involvement; column 18 line 24-26, customer feedback addresses success of product while in use.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes arising from use of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a request to test the success of one or more products, as taught by Abelow, because it would provide strategic

advantage to vendors of products by providing immediate feedback from

customers while a product was being used.

Regarding **Claim 5**, Gerace teaches:

obtaining advertisement success data regarding how advertisements

were viewed

(column 13 line 11-12, ad success data used in regression).

Gerace does not teach:

wherein the consumer feedback summary comprises a product

success data for each of the one or more products.

Abelow teaches:

wherein the consumer feedback summary comprises a product

success data for each of the one or more products

column 18 line 67 – column 19 line 3, vendors can apply module to all of

the products in a particular market to obtain feedback regarding success and

failure of product in that market to better tailor products for that market; column

25 line 20-23, digital data capturing customer interactions is transmitted back to

vendor's computer; column 55 line 15-19, reports of customer feedback

quantitative information is presented in a way that is easily understood.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customer's likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with the request to obtain consumer feedback comprises a product success data for each of the one or more products, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used.

Regarding **Claim 6**, Gerace teaches:

obtaining advertisement success data regarding how advertisements were viewed

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product.

Abelow teaches:

wherein the request to obtain consumer feedback comprises a

request to compare the success of two or more attributes of a product

column 38 line 17-12, data gathered on features that customers use.

Abelow teaches that providing feedback while a product is in use is of

strategic competitive advantage since it enables vendors to immediately

understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of

the invention to modify the teachings of Gerace, as discussed above, with

wherein the request to obtain consumer feedback comprises a request to

compare the success of two or more attributes of a product, as taught by Abelow,

because it would provide strategic advantage to vendors of products by providing

immediate feedback from customers while products were being used.

Regarding **Claim 7**, Gerace teaches:

obtaining advertisement success data regarding how advertisements

were viewed

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the consumer feedback summary comprises an attribute

success comparison data.

Abelow teaches:

wherein the consumer feedback summary comprises an attribute success comparison data

column 42 line 33-35, benchmarking probes capture data what the customers like about the product while using it, including that of various attributes of the product; column 55 line 30-36, various reports are available including graphs which provide ability to compare the success data.

Abelow teaches that providing feedback while a product is in use is of strategic competitive advantage since it enables vendors to immediately understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Gerace, as discussed above, with wherein the consumer feedback summary comprises an attribute success comparison data, as taught by Abelow, because it would provide strategic advantage to vendors of products by providing immediate feedback from customers while products were being used, where the feedback provided ability to compare the success of various attributes of the product.

Regarding **Claim 8**, Gerace teaches:

obtaining advertisement success data regarding how advertisements

were viewed

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the request to obtain consumer feedback comprises a

request to compare the success of two or more products.

Abelow teaches:

wherein the request to obtain consumer feedback comprises a

request to compare the success of two or more products.

column 42 line 20-24, benchmark probes solicit customer feedback

regarding competing products.

Abelow teaches that providing feedback while a product is in use is of

strategic competitive advantage since it enables vendors to immediately

understand a customers likes/dislikes of a product (column 18 line 33-37).

It would have been obvious to one of ordinary skill in the art at the time of

the invention to modify the teachings of Gerace, as discussed above, with

wherein the request to obtain consumer feedback comprises a request to

compare the success of two or more products, as taught by Abelow, because it

would provide strategic advantage to vendors of products by providing immediate

feedback from customers while products were being used, where the feedback

provides the ability to understand the success of two or more products in the

marketplace.

Regarding **Claim 9**, Gerace teaches:

obtaining advertisement success data regarding how advertisements

were viewed

column 13 line 11-12, ad success data used in regression.

Gerace does not teach:

wherein the consumer feedback summary comprises a product

success comparison data.

Abelow teaches:

wherein the consumer feedback summary comprises a product

success comparison data

column 9 line 38-39, module obtains findings in the middle of product

uses; column 19 line 54-56, automate findings from field trials for product uses;

column 33 line 3; module can obtain data from passive interactions, where the

user is unaware that data is being gathered on them; column 38 line 61-67,

product performance may be passively gathered without the customer's

involvement; column 18 line 24-26, customer feedback addresses success of

product while in use; column 55 line 15-29, customer based product design

reports presents quantitative information in a way that is easily understood by the

customer, including graphs and charts where comparisons can easily be made.

It would have been obvious to one of ordinary skill in the art at the time of

the invention to modify the teachings of Gerace, as discussed above, with

wherein the consumer feedback summary comprises a product success

comparison data, as taught by Abelow, because it would provide strategic

advantage to vendors of products by providing immediate feedback from

customers while products were being used, where the feedback provides the

ability to compare the success of a product in the marketplace.

Claims 17-19 recite similar limitations as those recited in **Claims 4-9**

above, and are therefore rejected under the same rationale.

Conclusion

9.   Applicant's amendment necessitated the new ground(s) of rejection

presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as

set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is

filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory

period, then the shortened statutory period will expire on the date the advisory

action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

10.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to Jonathan G. Sterrett whose telephone

number is (571) 272-6881. The examiner can normally be reached on Monday-

Friday, 8:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the

examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax

phone number for the organization where this application or proceeding is

assigned is 703-872-9306.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

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direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).

JGS   )GS
5-7-2006

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